

device for subsequent distribution under its own name, e.g., a properly labeled health aid such as an elastic bandage or crutch, indicating “distributed by” or “manufactured for” followed by the name of the pharmacy.

(f) Persons who manufacture, prepare, propagate, compound, or process devices solely for use in research, teaching, or analysis and do not introduce such devices into commercial distribution.

(g) [Reserved]

(h) Carriers by reason of their receipt, carriage, holding or delivery of devices in the usual course of business as carriers.

(i) Persons who dispense devices to the ultimate consumer or whose major responsibility is to render a service necessary to provide the consumer (i.e., patient, physician, layman, etc.) with a device or the benefits to be derived from the use of a device; for example, a hearing aid dispenser, optician, clinical laboratory, assembler of diagnostic x-ray systems, and personnel from a hospital, clinic, dental laboratory, orthotic or prosthetic retail facility, whose primary responsibility to the ultimate consumer is to dispense or provide a service through the use of a previously manufactured device.

[42 FR 42526, Aug. 23, 1977, as amended at 58 FR 46523, Sept. 1, 1993; 61 FR 44615, Aug. 28, 1996; 65 FR 17136, Mar. 31, 2000; 66 FR 59160, Nov. 27, 2001]

### Subpart E—Premarket Notification Procedures

#### § 807.81 When a premarket notification submission is required.

(a) Except as provided in paragraph (b) of this section, each person who is required to register his establishment pursuant to § 807.20 must submit a premarket notification submission to the Food and Drug Administration at least 90 days before he proposes to begin the introduction or delivery for introduction into interstate commerce for commercial distribution of a device intended for human use which meets any of the following criteria:

(1) The device is being introduced into commercial distribution for the first time; that is, the device is not of the same type as, or is not substan-

tially equivalent to, (i) a device in commercial distribution before May 28, 1976, or (ii) a device introduced for commercial distribution after May 28, 1976, that has subsequently been reclassified into class I or II.

(2) The device is being introduced into commercial distribution for the first time by a person required to register, whether or not the device meets the criteria in paragraph (a)(1) of this section.

(3) The device is one that the person currently has in commercial distribution or is reintroducing into commercial distribution, but that is about to be significantly changed or modified in design, components, method of manufacture, or intended use. The following constitute significant changes or modifications that require a premarket notification:

(i) A change or modification in the device that could significantly affect the safety or effectiveness of the device, e.g., a significant change or modification in design, material, chemical composition, energy source, or manufacturing process.

(ii) A major change or modification in the intended use of the device.

(b)(1) A premarket notification under this subpart is not required for a device for which a premarket approval application under section 515 of the act, or for which a petition to reclassify under section 513(f)(2) of the act, is pending before the Food and Drug Administration.

(2) The appropriate FDA Center Director may determine that the submission and grant of a written request for an exception or alternative under § 801.128 or § 809.11 of this chapter satisfies the requirement in paragraph (a)(3) of this section.

(c) In addition to complying with the requirements of this part, owners or operators of device establishments that manufacture radiation-emitting electronic products, as defined in § 1000.3 of this chapter, shall comply with the reporting requirements of part 1002 of this chapter.

[42 FR 42526, Aug. 23, 1977, as amended at 72 FR 73601, Dec. 28, 2007]

**§ 807.85**

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**§ 807.85 Exemption from premarket notification.**

(a) A device is exempt from the premarket notification requirements of this subpart if the device intended for introduction into commercial distribution is not generally available in finished form for purchase and is not offered through labeling or advertising by the manufacturer, importer, or distributor thereof for commercial distribution, and the device meets one of the following conditions:

(1) It is intended for use by a patient named in the order of the physician or dentist (or other specially qualified person); or

(2) It is intended solely for use by a physician or dentist (or other specially qualified person) and is not generally available to, or generally used by, other physicians or dentists (or other specially qualified persons).

(b) A distributor who places a device into commercial distribution for the first time under his own name and a repackager who places his own name on a device and does not change any other labeling or otherwise affect the device shall be exempted from the premarket notification requirements of this subpart if:

(1) The device was in commercial distribution before May 28, 1976; or

(2) A premarket notification submission was filed by another person.

**§ 807.87 Information required in a premarket notification submission.**

Each premarket notification submission shall contain the following information:

(a) The device name, including both the trade or proprietary name and the common or usual name or classification name of the device.

(b) The establishment registration number, if applicable, of the owner or operator submitting the premarket notification submission.

(c) The class in which the device has been put under section 513 of the act and, if known, its appropriate panel; or, if the owner or operator determines that the device has not been classified under such section, a statement of that determination and the basis for the person's determination that the device is not so classified.

(d) Action taken by the person required to register to comply with the requirements of the act under section 514 for performance standards.

(e) Proposed labels, labeling, and advertisements sufficient to describe the device, its intended use, and the directions for its use. Where applicable, photographs or engineering drawings should be supplied.

(f) A statement indicating the device is similar to and/or different from other products of comparable type in commercial distribution, accompanied by data to support the statement. This information may include an identification of similar products, materials, design considerations, energy expected to be used or delivered by the device, and a description of the operational principles of the device.

(g) Where a person required to register intends to introduce into commercial distribution a device that has undergone a significant change or modification that could significantly affect the safety or effectiveness of the device, or the device is to be marketed for a new or different indication for use, the premarket notification submission must include appropriate supporting data to show that the manufacturer has considered what consequences and effects the change or modification or new use might have on the safety and effectiveness of the device.

(h) A 510(k) summary as described in § 807.92 or a 510(k) statement as described in § 807.93.

(i) A financial certification or disclosure statement or both, as required by part 54 of this chapter.

(j) For submissions claiming substantial equivalence to a device which has been classified into class III under section 513(b) of the act:

(1) Which was introduced or delivered for introduction into interstate commerce for commercial distribution before December 1, 1990; and

(2) For which no final regulation requiring premarket approval has been issued under section 515(b) of the act, a summary of the types of safety and effectiveness problems associated with the type of devices being compared and a citation to the information upon which the summary is based (class III

summary). The 510(k) submitter shall also certify that a reasonable search of all information known or otherwise available about the class III device and other similar legally marketed devices has been conducted (class III certification), as described in § 807.94. This information does not refer to information that already has been submitted to the Food and Drug Administration (FDA) under section 519 of the act. FDA may require the submission of the adverse safety and effectiveness data described in the class III summary or citation.

(k) A statement that the submitter believes, to the best of his or her knowledge, that all data and information submitted in the premarket notification are truthful and accurate and that no material fact has been omitted.

(1) Any additional information regarding the device requested by the Commissioner that is necessary for the Commissioner to make a finding as to whether or not the device is substantially equivalent to a device in commercial distribution. A request for additional information will advise the owner or operator that there is insufficient information contained in the original premarket notification submission for the Commissioner to make this determination and that the owner or operator may either submit the requested data or a new premarket notification containing the requested information at least 90 days before the owner or operator intends to market the device, or submit a premarket approval application in accordance with section 515 of the act. If the additional information is not submitted within 30 days following the date of the request, the Commissioner will consider the premarket notification to be withdrawn.

(Information collection requirements in this section were approved by the Office of Management and Budget (OMB) and assigned OMB control number 0910-0281)

[42 FR 42526, Aug. 23, 1977, as amended at 57 FR 18066, Apr. 28, 1992; 59 FR 64295, Dec. 14, 1994; 63 FR 5253, Feb. 2, 1998]

#### § 807.90 Format of a premarket notification submission.

Each premarket notification submission pursuant to this part shall be sub-

mitted in accordance with this section. Each submission shall:

(a)(1) For devices regulated by the Center for Devices and Radiological Health, be addressed to the Food and Drug Administration, Center for Devices and Radiological Health, Document Mail Center, 10903 New Hampshire Ave., Bldg. 66, rm. G609, Silver Spring, MD 20993-0002.

(2) For devices regulated by the Center for Biologics Evaluation and Research, be addressed to the Document Control Center (HFM-99), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852-1448; or for devices regulated by the Center for Drug Evaluation and Research, be addressed to the Central Document Room, Center for Drug Evaluation and Research, Food and Drug Administration, 5901-B Ammendale Rd., Beltsville, MD 20705-1266. Information about devices regulated by the Center for Biologics Evaluation and Research is available at <http://www.fda.gov/cber/dap/devlst.htm> on the Internet.

(3) All inquiries regarding a premarket notification submission should be in writing and sent to one of the addresses above.

(b) Be bound into a volume or volumes, where necessary.

(c) Be submitted in duplicate on standard size paper, including the original and two copies of the cover letter.

(d) Be submitted separately for each product the manufacturer intends to market.

(e) Designated "510(k) Notification" in the cover letter.

[42 FR 42526, Aug. 23, 1977, as amended at 53 FR 11252, Apr. 6, 1988; 55 FR 11169, Mar. 27, 1990; 65 FR 17137, Mar. 31, 2000; 70 FR 14986, Mar. 24, 2005; 75 FR 20915, Apr. 22, 2010]

#### § 807.92 Content and format of a 510(k) summary.

(a) A 510(k) summary shall be in sufficient detail to provide an understanding of the basis for a determination of substantial equivalence. FDA will accept summaries as well as amendments thereto until such time as FDA issues a determination of substantial equivalence. All 510(k) summaries

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shall contain the following information:

(1) The submitter's name, address, telephone number, a contact person, and the date the summary was prepared;

(2) The name of the device, including the trade or proprietary name if applicable, the common or usual name, and the classification name, if known;

(3) An identification of the legally marketed device to which the submitter claims equivalence. A legally marketed device to which a new device may be compared for a determination regarding substantial equivalence is a device that was legally marketed prior to May 28, 1976, or a device which has been reclassified from class III to class II or I (the predicate), or a device which has been found to be substantially equivalent through the 510(k) premarket notification process;

(4) A description of the device that is the subject of the premarket notification submission, such as might be found in the labeling or promotional material for the device, including an explanation of how the device functions, the scientific concepts that form the basis for the device, and the significant physical and performance characteristics of the device, such as device design, material used, and physical properties;

(5) A statement of the intended use of the device that is the subject of the premarket notification submission, including a general description of the diseases or conditions that the device will diagnose, treat, prevent, cure, or mitigate, including a description, where appropriate, of the patient population for which the device is intended. If the indication statements are different from those of the legally marketed device identified in paragraph (a)(3) of this section, the 510(k) summary shall contain an explanation as to why the differences are not critical to the intended therapeutic, diagnostic, prosthetic, or surgical use of the device, and why the differences do not affect the safety and effectiveness of the device when used as labeled; and

(6) If the device has the same technological characteristics (i.e., design, material, chemical composition, energy source) as the predicate device identi-

fied in paragraph (a)(3) of this section, a summary of the technological characteristics of the new device in comparison to those of the predicate device. If the device has different technological characteristics from the predicate device, a summary of how the technological characteristics of the device compare to a legally marketed device identified in paragraph (a)(3) of this section.

(b) 510(k) summaries for those premarket submissions in which a determination of substantial equivalence is also based on an assessment of performance data shall contain the following information:

(1) A brief discussion of the nonclinical tests submitted, referenced, or relied on in the premarket notification submission for a determination of substantial equivalence;

(2) A brief discussion of the clinical tests submitted, referenced, or relied on in the premarket notification submission for a determination of substantial equivalence. This discussion shall include, where applicable, a description of the subjects upon whom the device was tested, a discussion of the safety or effectiveness data obtained from the testing, with specific reference to adverse effects and complications, and any other information from the clinical testing relevant to a determination of substantial equivalence; and

(3) The conclusions drawn from the nonclinical and clinical tests that demonstrate that the device is as safe, as effective, and performs as well as or better than the legally marketed device identified in paragraph (a)(3) of this section.

(c) The summary should be in a separate section of the submission, beginning on a new page and ending on a page not shared with any other section of the premarket notification submission, and should be clearly identified as a "510(k) summary."

(d) Any other information reasonably deemed necessary by the agency.

[57 FR 18066, Apr. 28, 1992, as amended at 59 FR 64295, Dec. 14, 1994]

**Food and Drug Administration, HHS**

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**§ 807.93 Content and format of a 510(k) statement.**

(a)(1) A 510(k) statement submitted as part of a premarket notification shall state as follows:

I certify that, in my capacity as (the position held in company by person required to submit the premarket notification, preferably the official correspondent in the firm), of (company name), I will make available all information included in this premarket notification on safety and effectiveness within 30 days of request by any person if the device described in the premarket notification submission is determined to be substantially equivalent. The information I agree to make available will be a duplicate of the premarket notification submission, including any adverse safety and effectiveness information, but excluding all patient identifiers, and trade secret and confidential commercial information, as defined in 21 CFR 20.61.

(2) The statement in paragraph (a)(1) of this section should be signed by the certifier, made on a separate page of the premarket notification submission, and clearly identified as "510(k) statement."

(b) All requests for information included in paragraph (a) of this section shall be made in writing to the certifier, whose name will be published by FDA on the list of premarket notification submissions for which substantial equivalence determinations have been made.

(c) The information provided to requestors will be a duplicate of the premarket notification submission, including any adverse information, but excluding all patient identifiers, and trade secret and confidential commercial information as defined in §20.61 of this chapter.

[59 FR 64295, Dec. 14, 1994]

**§ 807.94 Format of a class III certification.**

(a) A class III certification submitted as part of a premarket notification shall state as follows:

I certify, in my capacity as (position held in company), of (company name), that I have conducted a reasonable search of all information known or otherwise available about the types and causes of safety or effectiveness problems that have been reported for the (type of device). I further certify that I am aware of the types of problems to which

the (type of device) is susceptible and that, to the best of my knowledge, the following summary of the types and causes of safety or effectiveness problems about the (type of device) is complete and accurate.

(b) The statement in paragraph (a) of this section should be signed by the certifier, clearly identified as "class III certification," and included at the beginning of the section of the premarket notification submission that sets forth the class III summary.

[59 FR 64296, Dec. 14, 1994]

**§ 807.95 Confidentiality of information.**

(a) The Food and Drug Administration will disclose publicly whether there exists a premarket notification submission under this part:

(1) Where the device is on the market, i.e., introduced or delivered for introduction into interstate commerce for commercial distribution;

(2) Where the person submitting the premarket notification submission has disclosed, through advertising or any other manner, his intent to market the device to scientists, market analysts, exporters, or other individuals who are not employees of, or paid consultants to, the establishment and who are not in an advertising or law firm pursuant to commercial arrangements with appropriate safeguards for secrecy; or

(3) Where the device is not on the market and the intent to market the device has not been so disclosed, except where the submission is subject to an exception under paragraph (b) or (c) of this section.

(b) The Food and Drug Administration will not disclose publicly the existence of a premarket notification submission for a device that is not on the market and where the intent to market the device has not been disclosed for 90 days from the date of receipt of the submission, if:

(1) The person submitting the premarket notification submission requests in the submission that the Food and Drug Administration hold as confidential commercial information the intent to market the device and submits a written certification to the Commissioner:

(i) That the person considers his intent to market the device to be confidential commercial information;

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(ii) That neither the person nor, to the best of his knowledge, anyone else, has disclosed through advertising or any other manner, his intent to market the device to scientists, market analysts, exporters, or other individuals, except employees of, or paid consultants to, the establishment or individuals in an advertising or law firm pursuant to commercial arrangements with appropriate safeguards for secrecy;

(iii) That the person will immediately notify the Food and Drug Administration if he discloses the intent to market the device to anyone, except employees of, or paid consultants to, the establishment or individuals in an advertising or law firm pursuant to commercial arrangements with appropriate safeguards for secrecy;

(iv) That the person has taken precautions to protect the confidentiality of the intent to market the device; and

(v) That the person understands that the submission to the government of false information is prohibited by 18 U.S.C. 1001 and 21 U.S.C. 331(q); and

(2) The Commissioner agrees that the intent to market the device is confidential commercial information.

(c) Where the Commissioner determines that the person has complied with the procedures described in paragraph (b) of this section with respect to a device that is not on the market and where the intent to market the device has not been disclosed, and the Commissioner agrees that the intent to market the device is confidential commercial information, the Commissioner will not disclose the existence of the submission for 90 days from the date of its receipt by the agency. In addition, the Commissioner will continue not to disclose the existence of such a submission for the device for an additional time when any of the following occurs:

(1) The Commissioner requests in writing additional information regarding the device pursuant to § 807.87(h), in which case the Commissioner will not disclose the existence of the submission until 90 days after the Food and Drug Administration's receipt of a complete premarket notification submission;

(2) The Commissioner determines that the device intended to be intro-

duced is a class III device and cannot be marketed without premarket approval or reclassification, in which case the Commissioner will not disclose the existence of the submission unless a petition for reclassification is submitted under section 513(f)(2) of the act and its existence can be disclosed under § 860.5(d) of this chapter; or

(d) FDA will make a 510(k) summary of the safety and effectiveness data available to the public within 30 days of the issuance of a determination that the device is substantially equivalent to another device. Accordingly, even when a 510(k) submitter has complied with the conditions set forth in paragraphs (b) and (c) of this section, confidentiality for a premarket notification submission cannot be granted beyond 30 days after FDA issues a determination of equivalency.

(e) Data or information submitted with, or incorporated by reference in, a premarket notification submission (other than safety and effectiveness data that have not been disclosed to the public) shall be available for disclosure by the Food and Drug Administration when the intent to market the device is no longer confidential in accordance with this section, unless exempt from public disclosure in accordance with part 20 of this chapter. Upon final classification, data and information relating to safety and effectiveness of a device classified in class I (general controls) or class II (performance standards) shall be available for public disclosure. Data and information relating to safety and effectiveness of a device classified in class III (premarket approval) that have not been released to the public shall be retained as confidential unless such data and information become available for release to the public under § 860.5(d) or other provisions of this chapter.

[42 FR 42526, Aug. 23, 1977, as amended at 53 FR 11252, Apr. 6, 1988; 57 FR 18067, Apr. 28, 1992; 59 FR 64296, Dec. 14, 1994]

**§ 807.97 Misbranding by reference to premarket notification.**

Submission of a premarket notification in accordance with this subpart, and a subsequent determination by the Commissioner that the device intended

for introduction into commercial distribution is substantially equivalent to a device in commercial distribution before May 28, 1976, or is substantially equivalent to a device introduced into commercial distribution after May 28, 1976, that has subsequently been reclassified into class I or II, does not in any way denote official approval of the device. Any representation that creates an impression of official approval of a device because of complying with the premarket notification regulations is misleading and constitutes misbranding.

**§ 807.100 FDA action on a premarket notification.**

(a) After review of a premarket notification, FDA will:

(1) Issue an order declaring the device to be substantially equivalent to a legally marketed predicate device;

(2) Issue an order declaring the device to be not substantially equivalent to any legally marketed predicate device;

(3) Request additional information; or

(4) Withhold the decision until a certification or disclosure statement is submitted to FDA under part 54 of this chapter.

(5) Advise the applicant that the premarket notification is not required. Until the applicant receives an order declaring a device substantially equivalent, the applicant may not proceed to market the device.

(b) FDA will determine that a device is substantially equivalent to a predicate device using the following criteria:

(1) The device has the same intended use as the predicate device; and

(2) The device:

(i) Has the same technological characteristics as the predicate device; or

(ii)(A) Has different technological characteristics, such as a significant change in the materials, design, energy source, or other features of the device from those of the predicate device;

(B) The data submitted establishes that the device is substantially equivalent to the predicate device and contains information, including clinical data if deemed necessary by the Commissioner, that demonstrates that the

device is as safe and as effective as a legally marketed device; and

(C) Does not raise different questions of safety and effectiveness than the predicate device.

(3) The predicate device has not been removed from the market at the initiative of the Commissioner of Food and Drugs or has not been determined to be misbranded or adulterated by a judicial order.

[57 FR 58403, Dec. 10, 1992, as amended at 63 FR 5253, Feb. 2, 1998]

**PART 808—EXEMPTIONS FROM FEDERAL PREEMPTION OF STATE AND LOCAL MEDICAL DEVICE REQUIREMENTS**

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AUTHORITY: 21 U.S.C. 360j, 360k, 371.

SOURCE: 43 FR 18665, May 2, 1978, unless otherwise noted.